

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3881 OF 2005**

Dinesh Govind Patil

...Applicant

vs.

State of Maharashtra

...Respondent

Mr.N.N.Gawankar with Mr.Arfan A.H.E.A.Sait for the applicant
Mr.K.V.Saste,A.P.P. for State

**CORAM: A.S.OKA,J.
DATE : JULY 4,2005.**

P.C.:

1. The Applicant is a co-accused in F.I.R. registered at Bhiwandi Taluka Police Station for the offence punishable under Sections 302, 366, 323, 324, 147, 148, 149, 504, 506 read with Section 34 of the Indian Penal Code. The Applicant was arrested on 7th December 2004. After completion of the investigation, charge sheet has been filed. The application for bail made by the Applicant in the Sessions Court has been rejected on the ground that there was a long standing and bitter rivalry between two groups. The Sessions Court referred to the injuries found on the person of the deceased Namdeo and observed that the injuries were not as simple as injuries on the person of the complainant.

2. The learned Counsel for the Applicant invited my attention to the initial statement of the complainant Tukaram and his two supplementary statements recorded subsequently and submitted that the version in the said statements makes the prosecution story very vulnerable. He referred to the

P.M.Notes and submitted that none of the injuries on the person of the deceased have been caused by a sword.

3. The learned A.P.P. pointed out that the statements of the other witnesses which are recorded under Section 161 of the Code of Criminal Procedure, 1973 and stated that the role ascribed to the Applicant is very specific. There is recovery of a sword at the instance of the Applicant.

4. I have considered the submissions. According to the prosecution case, initially the F.I.R. is registered by the complainant Tukaram on 20th November 2004 at about 15.05 p.m. alleging commission of offence under Section 323 of the I.P.C. The case of the complainant is that he along with three others were sleeping in the farm and at about 4.00 a.m. they got up when the blankets on their person were removed by someone. He stated that there were four persons including the Applicant and at the instance of the Applicant, other three persons started assaulting him and three others by using sticks. He stated that the Applicant assaulted on his right arm by using a sword. He stated that as a result of injuries sustained by him, he lost consciousness. In the said statement he has not stated anything about any assault on the deceased Namdeo by the applicant by using a sword. All that he stated is that the deceased was assaulted by one of the accused Sanjay by a stick. The dead body of the deceased was found on 21st November 2004 at a place which is 30 kilometres away from the

place of alleged assault took place. The first supplementary statement of the complainant was recorded on 22nd November 2004 in which he described that at about 4.30 a.m. on 20th November 2004 five persons including the Applicant came there. He stated in the said statement that apprehending that he will be killed, he was quietly lying on the ground when he saw that five persons including the Applicant taking Namdeo to a vehicle which was standing on the Road. He stated that they took Namdeo in the said vehicle towards village Sagaon and thereafter, he lost consciousness. The second supplementary statement was recorded on 26th November 2004. In the said statement the complainant stated that at 4.00 a.m. on 20th November 2004 total 11 persons came to the farm where he along with three others were sleeping. The statement of the other relevant witnesses are recorded on 28th November 2004.

5. The P.M.Notes prima facie did not show any injury on the person of the deceased which is caused by the weapon like sword. However, the cause of death is shown as traumatic rupture of Heart and multiple fractures (unnatural). The injuries on the person of the complainant are in the nature of simple injuries.

6. At this stage it appears that the complainant has made drastic improvements in the supplementary statements. The statement of the other witnesses have been recorded more than seven days after the death of incident. The recovery of the

sword is in December 2004 and the sword does not have any blood stains. All these factors make the prosecution story very weak. In any event, this is not a case where custody of the Applicant can be continued. However, the Applicant can be put to stringent terms and conditions including the condition to remain away from Taluka Bhiwandi till the conclusion of the trial and report to the concerned local Police Station once in a week.

7. Hence I pass the following order :

i) The Applicant shall be enlarged on bail in connection with C.R.No.I-54 of 2004 registered with Bhiwandi Taluka Police Station, subject to furnishing a personal bond of Rs.20,000/- (Rupees twenty thousand only) with one or two sureties in the like amount.

ii) The Bail is granted subject to condition that till the conclusion of trial the Applicant shall not enter the area falling within the jurisdiction of Bhiwandi Taluka, District Thane.

iii) The bail is granted subject to condition that before his release the Applicant shall submit to the concerned Officer of the jail, Investigating Officer and Trial Court his address of residence and after the Applicant is enlarged on bail he will report to the local police station once in a week.

iv) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

v) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) The parties to act upon an authenticated copy of this order.

JUDGE